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November 9, 2007

The Honorable Phil Isenberg, Chair
Delta Vision Blue Ribbon Task Force
650 Capitol Mall, 5th Floor
Sacramento, CA 94814

Re: RCRC Comments on Second Draft - *A Vision for California's Delta*

Dear Chairman Isenberg:

On behalf of the thirty-one member counties of the Regional Council of Rural Counties (RCRC), I am submitting the following comments on the second draft "vision" prepared by staff for the Delta Vision Blue Ribbon Task Force titled *A Vision for California's Delta*. As you may recall, RCRC submitted preliminary comments on the first draft "vision".

The draft document touches briefly on the fact that the Delta's watershed receives nearly half of the precipitation for the state, and that the major demand for water is west and south of the Delta. It also notes that millions more people will arrive in northern California over the coming decades. The draft document makes mention of the State Water Project (SWP) and Central Valley Project (CVP) and water rights law as it relates to the diversion of water from upstream sources, the storage of that water in reservoirs, and the conveyance in canals and by pumps to points of use. The Public Trust Doctrine is explained and referenced several times within the text. However, no acknowledgement is given of area of origin water rights and water right priorities.

By way of background:

- **The County of Origin Preference (Water Code § 10505).** Water Code Section 10505, enacted in 1931, applies to all filings for water rights priorities made by the California Department of Finance as "part of a general or coordinated plan [for] the development, utilization, or conservation of the water resources of the State." Water Code § 10500. The statute prohibits the Department of Finance from releasing any such water right priority—to the Department of Water Resources, the U.S. Bureau of Reclamation, or any other person or entity—if the development of water pursuant to that priority would "deprive the county in which the appropriated water originates of any such water necessary for the development of the county."
- **The Watershed Protection Act (Water Code §§ 11128 & 11460-11463).** Water Code Sections 11460-11463 were enacted as part of the Central Valley Project Act of 1933 and apply to all water developed by the federal Central Valley Project (*see* Water Code § 11128) and the California State Water Project. *El Dorado Irrigation District v. State Water Resources Control*

Board, 142 Cal. App. 4th 937, 974 (3d Dist. 2006). This law requires the Central Valley Project (CVP) and State Water Project (SWP) to ensure that project operations do not deprive users within the watersheds from which project water originates—or areas “immediately adjacent to which can conveniently be supplied with water therefrom”— of “the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.” Water Code § 11460.

- **Racanelli Decision.** In the landmark *Delta Water Cases* opinion, Justice John Racanelli explained that the County of Origin and Watershed of Origin laws have “a common purpose: to reserve to the areas of origin an undefined preferential right to future water needs. The established priority does not create an individual ‘water right’ but rather a grant which is wholly inchoate. As the needs of a watershed inhabitant develop, he must make and perfect a regular application to appropriate water; the Board must issue the permit despite the needs of the projects, and the water projects must honor the vested water right thus created.” *United States v. State Water Resources Control Board*, 182 Cal. App. 2d 82, 139 (1st Dist. 1986) (citing 25 Ops. Cal. Atty. Gen. 8, 10 & 20-21 (1955)).

As this brief history demonstrates, the area of origin statutes were an essential component of the political and legal consensus that authorized both the construction of the CVP and the SWP and the export of much of California’s surface water supplies from counties in the Trinity River watershed, the Sacramento and Feather River watersheds, and the upper San Joaquin River watershed to users in the Bay Area, the San Joaquin Valley, and Southern California. The area of origin protections were necessary to ensure that the export of water to the burgeoning agricultural, urban, and suburban regions of the state would not jeopardize the health and prosperity of the predominantly rural counties and watersheds in which the lion’s share of California’s water supplies originates by depriving these areas of origin of water they might need for their own future economic development.

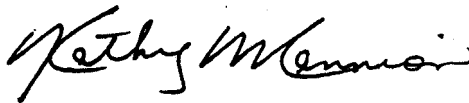
The Delta Vision Blue Ribbon Task Force proposes both new water storage and new or improved water conveyance, thus carrying forward the policies of state water resources development of which the County of Origin and Watershed of Origin statutes were integral parts. Express recognition and reiteration that the future needs for water in the counties and watershed in which this water originates will not be jeopardized by water exports is therefore as essential to contemporary water resources planning as it was to the original California Water Plan. Of equal importance is adequate assurances that programs or facilities implemented or constructed in the Delta will not result in redirection of adverse impacts to the counties and watersheds of origin.

RCRC believes it is essential that the document containing the Delta Vision Blue Ribbon Task Force recommendations on developing a durable vision for sustainable management of the Delta acknowledge the existing legal protections for the areas in which California’s water originates. Likewise, area of origin law assurances must be incorporated into the strategic plan for implementation of the final “vision” to be developed in 2008. RCRC strongly urges that the third draft “vision” document acknowledge and discuss existing area of origin water right law and state the intent of the Delta Vision Blue Ribbon Task Force to adhere to the provisions of existing area of origin law as it develops the strategic plan for implementation.

RCRC supports efforts to increase regional self-sufficiency both north and south of the Delta. As noted in the draft document, Northern California’s population is expected to significantly increase over the coming decades. It is imperative that bond funding and other types of financial assistance for projects to reduce demand and increase water supply (water use efficiency/conservation, surface/groundwater storage, etc.) and address water quality issues (water/wastewater treatment, etc.) be distributed equitably to all regions of the state to meet existing and future needs.

RCRC appreciates the opportunity to provide these comments to the Delta Vision Blue Ribbon Task Force. If you have any questions please feel free to contact me (916) 447-4806.

Sincerely,,

A handwritten signature in black ink that reads "Kathy Mannion". The signature is fluid and cursive, with the first name "Kathy" being more prominent than the last name "Mannion".

Kathy Mannion
Director of Water and Power

cc: Governor Arnold Schwarzenegger
Members, Delta Vision Blue Ribbon Task Force
Mr. John Kirlin, Executive Director, Delta Visions Blue Ribbon Task Force
Members, Delta Vision Committee
Lester Snow, Director, Department of Water Resources